

Message Text

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SUBJECT: PROPOSED SEVENTH EC COUNCIL DIRECTIVE ON COMPANY LAW --
GROUP ACCOUNTS

REF: A) STATE 120516 (NOTAL), B) EC BRUSSELS A-237, JULY 31, 1974

1. SUMMARY: THE EC COMMISSION HAS SENT THE EC COUNCIL A PROPOSAL THAT WOULD REQUIRE GROUPS OF COMPANIES TO PROVIDE MEMBER STATE GOVERNMENTS WHERE THEY HAVE OPERATIONS WITH CONSOLIDATED ACCOUNTS FOR THE ENTIRE GROUP. EC COMMISSION OFFICIALS DO NOT SEE A DIRECT RELATIONSHIP BETWEEN THE PROPOSAL AND THE INFORMATION RULES IN THE PROPOSED OECD MNC CODE. THIS PROPOSAL, IF ADOPTED, WOULD BE BINDING ON COMPANIES. WHETHER OR NOT THE PROPOSAL IMPACTS ON THE OECD CODE, IT DOES RAISE MANY QUESTIONS REGARDING ITS POSSIBLE EFFECT ON US SUBSIDIARIES OPERATING IN EUROPE. THERE DOES NOT, HOWEVER, APPEAR TO BE ANY DISCRIMINATION AGAINST SUBSIDIARIES OF NON-EC FIRMS. COPIES OF THE PROPOSAL HAVE BEEN SENT TO EUR/RPE AND WILL ALSO BE TRANSMITTED BY AIRGRAM. END SUMMARY.

2. AS PART OF ITS PROGRAM TO HARMONIZE THE CORPORATE LAW OF THE MEMBER STATES THE EC COMMISSION ON APRIL 28
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SENT THE EC COUNCIL A PROPOSED SEVENTH EC COUNCIL DIRECTIVE ON COMPANY LAW. (COPIES OF THE PROPOSAL

WERE SENT TO EUR/RPE ATT. BRESLER ON MAY 7 AND 13. SEE REFERENCE B WHICH DESCRIBES THE FIRST DIRECTIVE AND FOUR OTHER PROPOSED DIRECTIVES). THE SEVENTH DRAFT DIRECTIVE IS A FOLLOW-UP TO THE FOURTH DRAFT DIRECTIVE, WHICH SETS OUT THE RULES FOR THE ANNUAL STATEMENTS OF INDIVIDUAL CORPORATIONS. THE IMPORTANT DIFFERENCE BETWEEN THE TWO PROPOSALS IS THAT THE SEVENTH DRAFT DIRECTIVE REQUIRES THAT COMPANIES PROVIDE THE AUTHORITIES OF THE MEMBER STATES WHERE THEY ARE LOCATED WITH CONSOLIDATED ANNUAL ACCOUNTS FOR ALL OF THE COMPANIES BELONGING TO THE SAME GROUP. THIS IS WHY THE STORY IN THE ECONOMIST, CITED IN REFTEL A, EMPHASIZES THAT THE PROPOSAL IS DESIGNED TO CONTROL MULTINATIONAL CORPORATIONS.

3. ONE REASON ADVANCED BY THE COMMISSION FOR THE NEW PROPOSAL IS THAT THE ANNUAL ACCOUNTS OF INDIVIDUAL COMPANIES BELONGING TO A GROUP OF COMPANIES DO NOT, BY THEMSELVES, GIVE A TRUE AND FAIR VIEW OF THE COMPANY'S POSITION. THIS CAN ONLY BE DETERMINED IN THE LIGHT OF CONSOLIDATED ACCOUNTS. A SECOND REASON, GIVEN BY COMMISSIONER GUNDELACH IN A PRESS BRIEFING, IS THAT THE CONSOLIDATED GROUP ACCOUNTS (CONSOLIDATED BALANCE SHEET, CONSOLIDATED PROFIT AND LOSS ACCOUNT AND NOTES TO THE ACCOUNT) WOULD HELP TO MAKE THE ACTIVITIES OF MULTINATIONAL CORPORATIONS MORE TRANSPARENT.

4. CORPORATIONS WITH THEIR HEAD OFFICES IN EC COUNTRIES WOULD HAVE TO PROVIDE CONSOLIDATED ACCOUNTS FOR ALL OF THE COMPANIES WHICH THEY CONTROL, WHETHER INSIDE OR OUTSIDE THE EC. US SUBSIDIARIES WITHIN THE EC WOULD HAVE TO DRAW UP CONSOLIDATED ACCOUNTS FOR ALL OF THE COMPANIES IN THE EC CONTROLLED BY THE SAME US PARENT. US SUBSIDIARIES AS WELL AS EC COMPANIES WOULD ALSO BE REQUIRED TO PREPARE CONSOLIDATED ACCOUNTS FOR SUB-GROUPS OF COMPANIES WHICH THEY CONTROL.

5. THE PROPOSED DIRECTIVE CONTAINS SEVERAL ARTICLES
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COVERING ACCOUNTING AND INFORMATIONAL REQUIREMENTS. (THESE ARE EXPLAINED IN AN "EXPLANATORY MEMO" FOUND IN THE DOCUMENT TRANSMITTED TO THE DEPARTMENT). ARTICLE 20 ON "NOTES TO THE ACCOUNTS" CONTAINS INFORMATION REQUIREMENTS ON TAXES AND GROUP TURNOVER BY CATEGORY OF PRODUCT AND ACTIVITY. IT ALSO REQUIRES THAT THE AMOUNT CONTRIBUTED BY EACH CATEGORY AND MARKET TO THE GROUP'S RESULT FOR THE YEAR MUST BE INDICATED. ACCORDING TO A COMMISSION CONTACT, THIS LATTER REPORTING REQUIREMENT WOULD OPEN THE CORPORATE GROUP TO CLOSER

CRUTINY ON ITS INTRA-GROUP TRANSFER PRICING.

6. IN RESPONSE TO REFTEL A WE ASKED BERNARD POSNER OF THE EC COMMISSION'S DIRECTORATE GENERAL FOR THE INTERNAL MARKET WHAT THE RELATIONSHIP WAS BETWEEN THE DRAFT DIRECTIVE AND THE OECD CODE OF CONDUCT ON MNCS. POSNER, (WHO WILL BE ATTENDING THE MEETING OF THE OECD COMMITTEE ON INTERNATIONAL INVESTMENT AND MNCS ON MAY 20) SAID THAT THERE WAS NO DIRECT CONNECTION. HE SAID THAT WHEREAS THE OECD CODE'S CHAPTER ON DISCLOSURE AND INFORMATION WAS "WEAK AND AMBIGUOUS", THE SEVENTH DRAFT DIRECTIVE CONTAINS AN ABSOLUTELY LEGALLY BINDING OBLIGATION TO PROVIDE DETAILED INFORMATION TO NATIONAL AUTHORITIES. US EXPERTS ATTENDING THE OECD MEETING MAY WISH TO PURSUE THIS ISSUE WITH POSNER.

7. REGARDING THE TIMING OF APPROVAL BY THE EC COUNCIL OF THE SEVENTH DRAFT DIRECTIVE, EXPERIENCE HAS SHOWN THAT THE PACE IS USUALLY QUITE SLOW. POSNER SAID THE COMMISSION HOPES THAT THE FOURTH DRAFT DIRECTIVE WILL BE APPROVED BY THE END OF 1976. HIS GUESS WAS THAT THE SEVENTH DRAFT DIRECTIVE WOULD TAKE THREE OR FOUR YEARS TO WIN COUNCIL APPROVAL.

8. COMMENT: SINCE WE ARE NOT EXPERTS ON CORPORATE REPORTING REQUIREMENTS IN EITHER THE MEMBER STATES OR IN THE US NOR ON THE IMPACT IN THIS FIELD OF THE OECD CODE ON MNCS, IT IS HARD FOR US TO MEASURE THE EFFECT OF THE PROPOSAL ON US COMPANIES. ONE CORPORATE OFFICIAL TOLD US THAT US CORPORATIONS ALREADY PRODUCE CONSOLIDATED ACCOUNTS. HIS CONCERN WAS WITH THE LIMITED OFFICIAL USE
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POSSIBILITY OF SUBSIDIARIES IN EUROPE BEING REQUIRED TO BREAK OUT OF THE CONSOLIDATED ACCOUNTS THE SITUATION IN INDIVIDUAL COUNTRIES THUS LEAVING THEMSELVES OPEN TO INVIDIOUS COMPARISONS BETWEEN THEIR INVESTMENT EFFORTS IN DIFFERENT COUNTRIES. THERE MAY BE SOME OF THIS BREAKING OUT REQUIRED IN ARTICLE 20. AT THIS VERY EARLY STAGE IN EC CONSIDERATION OF THE PROPOSAL, WE WOULD SUGGEST THAT WASHINGTON OFFICIALS GIVE IT THE CLOSE SCRUTINY IT DESERVES AND INFORM US OF SPECIFIC QUESTIONS AND PROBLEMS THAT WE MIGHT TAKE UP WITH THE COMPETENT EC OFFICIALS. END COMMENT.

9. IN ADDITION TO THE SEVENTH DRAFT DIRECTIVE, TWO PROPOSALS THAT WOULD EFFECT MNCS ARE CURRENTLY BEING DEVELOPED BY THE EC COMMISSION. ONE WOULD BE A LAW OF GROUPS, WHICH WOULD PROVIDE A LEGAL BASIS FOR THE INCORPORATION OF A GROUP OF COMPANIES. THIS PROPOSAL, WHICH MAY BE READY TO BE SENT TO THE EC COUNCIL BY EARLY NEXT

YEAR, WOULD ALSO ESTABLISH THE LEGAL RELATIONSHIPS
BETWEEN PARENTS AND SUBSIDIARIES. THE SECOND PROPOSAL,
WHICH IS IN THE VERY EARLY STAGES OF COMMISSION CONSIDERATION,
WOULD BE DIRECTED AT ESTABLISHING THE RIGHT OF WORKERS
TO BE CONSULTED BY PARENT COMPANIES ON MAJOR DECISIONS
AFFECTING THE GROUP OR THE SUBSIDIARY WHERE THEY WORK.
IT ALSO WOULD ESTABLISH RULES ON INFORMING WORKERS OF
CORPORATE PLANNINGS.HINTON

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